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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,547	03/01/2004	Wilma Albert	ZTP01P15112	3285
24131	7590	04/20/2005	EXAMINER	
LERNER AND GREENBERG, PA			TILL, TERRENCE R	
P O BOX 2480			ART UNIT	
HOLLYWOOD, FL 33022-2480			PAPER NUMBER	

1744

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/791,547

Applicant(s)

ALBERT ET AL.

Examiner

Terrence R. Till

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,17-23 and 26-33 is/are rejected.
- 7) ☐ Claim(s) 3-16,24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/1/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 8/30/01. It is noted, however, that applicant has not filed a certified copy of the 101 42 509.0 application as required by 35 U.S.C. 119(b).

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 17-23, 26, 27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Matsushita Electric in view of Stephens et al. '009 (cited in IDS).

6. The patent to Matsushita Electric discloses a vacuum cleaner with an instrument housing 12 defining a dust collection compartment therein and having a movable cover 15, a dust collector to be inserted into the housing comprising a dust bag 13 inserted into the dust collection compartment and closed by the cover, said dust bag having: a reinforcing plate 18 having an underside; a clip (lower tongue portions- see figure 4) disposed on said underside of said reinforcing plate and a pivotable fixture 19 operatively connected to said reinforcing plate, said fixture having lateral guide strips (see figures 7 and 8). Matsushita Electric also discloses the clip having lateral recesses (see figure 4). Matsushita Electric does not disclose either the reinforcing member, including the clip, or the pivotable fixture selected from one of the group consisting of a funnel and trapezoid. The patent to Stephens et al. '009 discloses a similar bag retaining structure (shown in figure 5) with a pivotable fixture 200 and a dust bag 130 having a reinforcing plate 134. Both the fixture and reinforcing plate having a trapezoidal shape (see column 4, lines 65 to column 5, lines 5). It would have been an obvious matter of engineering choice to modify the shape of the fixture and reinforcing member of Matsushita Electric to have a trapezoidal shape, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976). Additionally such a

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trapezoidal shape would allow for only a single orientation, preventing any misalignment, or improper installation. With respect to claims 17, 21, 26 and 33, Matsushita Electric, once modified by Stephens et al. would also have the clip portion be tapered so that the reinforcing member retains the shape of a trapezoid.

7. Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsushita Electric, once modified by Stephens et al. '009 as applied to claim 26 above, and further in view of Johanssen.

Matsushita Electric, once modified by Stephens et al., discloses the reinforcing plate has an air inlet opening with a lower part, but does not disclose the air inlet opening has a straight edge in said lower part. The patent to Johanssen discloses a filter bag and reinforcing member that has a lower part 7 (Figure 1) that is made of a resilient material and has a straight edge parallel to the upper edge of the reinforcing member. It would have been obvious to a person skilled in the art at the time the invention was made to provide the reinforcing member of Matsushita Electric with a straight resilient member on the lower part in view of the teaching of Johanssen in order to lock the filter bag onto the inlet tube, (see column 1, lines 20-25). With respect to claim 30, it can be seen from figure 1 of Johanssen that there is a seal 6,8,9 that would surround the inlet connector, but Johanssen does not disclose that it is rubber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the resilient material of Johanssen to be made of rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416. Additionally, it is most

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likely that the resilient material of Johanssen is rubber as that is commonly used in the art for the same application.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsushita Electric, once modified by Stephens et al. '009 as applied to claim 26 above, and further in view of PCT publication to Billskog et al.

9. Matsushita Electric, once modified by Stephens et al., does not disclose the reinforcing plate defines a grip opening. The PCT publication to Billskog et al. discloses a filter bag with a reinforcing member 12 that has a grip portion 24,24a. It would have been obvious to a person skilled in the art at the time the invention was made to provide a grip opening to the reinforcing plate of Matsushita Electric in view of the teaching of Billskog et al. in order to more easily remove the dust bag from the fixture when full.

#### ***Allowable Subject Matter***

10. Claims 3-16, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

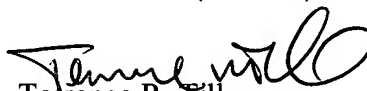
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lee, Kopco et al., Himukai, and Lindquist disclose of bag attachment structures. The Japanese patent to Hitachi, the German patents to Fleischer et al., Smith and Schmierer disclose filter attachment members indicate if a filter is not there.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sun U. Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Terrence R. Till  
Primary Examiner  
Art Unit 1744

trt